



Agenda Date: 8/16/06  
Agenda Item: 5A -2

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

IN THE MATTER OF THE JOINT PETITION OF )  
NEW JERSEY AMERICAN WATER COMPANY, )  
INC., ELIZABETHTOWN WATER COMPANY, )  
AND THE MOUNT HOLLY WATER COMPANY )  
FOR APPROVAL OF THE MERGER OF )  
ELIZABETHTOWN WATER COMPANY AND )  
THE MOUNT HOLLY WATER COMPANY INTO )  
NEW JERSEY AMERICAN WATER COMPANY )  
AND FOR RELATED AUTHORIZATIONS )

WATER

ORDER ON MOTION FOR  
INTERVENTION, DISCOVERY AND  
EVIDENTIARY HEARINGS AND ON  
MOTION FOR PRO HAC  
VICE ADMISSION

Docket No. WM06030253

(SEE ATTACHED SERVICE LIST)

BY THE BOARD:

By letter dated May 23, 2006, Locals 391 and 423 of the Utility Workers Union of America (collectively the Locals) filed a Motion to Intervene in this proceeding which concerns the March 29, 2006 Joint Petition of New Jersey-American Water Company Inc., (NJAWC), Elizabethtown Water Company (EWC), and the Mount Holly Water Company (MHWC) for approval of the merger of EWC and MHWC into NJAWC. Along with the motion to intervene, a related Motion for Admission Pro Hac Vice was filed. The Locals further request discovery and evidentiary hearings.

MOTION TO INTERVENE

**POSITION OF LOCALS:**

In support of their motion to intervene, the Locals state that 85 NJAWC employees are represented by Local No. 391 and perform operation and maintenance work critical to the provision of reliable and cost efficient service by NJAWC. Approximately 250 workers who perform operations and maintenance work critical to the provision of reliable and cost efficient water and wastewater service by EWC and MHWC are represented by Local 423. Motion at 2. The Locals contend that these employees will be directly affected by the outcome of this proceeding. Id. Noting that the Board is statutorily obligated pursuant to N.J.S.A. 48:2-51.1 to consider the impact of the proposed merger upon competition, rates, employees, and on quality of service, the Locals state that their participation in this proceeding will bring to the record and information relevant to such issues. Id.

In addition, the Locals identify various labor issues that they believe may be impacted by the merger. These issues involve: (1) possible reassignment of territories to different bargaining

units; (2) possible adverse impact on employee transfers between different NJAWC locations; (3) feared disregard by the new merged entity of current collective bargaining agreements, notwithstanding Joint Petitioners statements to the contrary and; (4) potential adverse impact on customer service. Motion at 4-5. The Locals also challenge as "conclusory" assertions by the Joint Petitioners that the merger will not have any adverse impact on employees, rates, competition, and will improve service. The Locals seek specific support (data and statistics) from the Joint Petitioners to support these conclusions. Motion at 5-7.

Of particular concern to the Locals is the possibility of lay-offs as a result of the proposed merger. The Locals state that they "are not persuaded by Petitioner's conclusory assertion that there is no plan to reduce forces and want to be heard on this issue." Motion at 7.

Finally, the Locals request that the Board conduct full evidentiary hearing into the impact of the merger and permit discovery from the Joint Petitioners so as to facilitate the creation of an adequate record. Motion at 8. The Locals represent that, if granted intervenor status, they will coordinate their participation in this proceeding and ensure that there will be no duplication of effort or undue burden on other participants. Motion at 3.

## **POSITION OF JOINT PETITIONERS**

By letter dated June 23, 2006, the Joint Petitioners filed a reply (Letter Reply) to the Union's motion to intervene. In their Letter Reply, the Joint Petitioners oppose what they perceive to be an attempt by the Locals to utilize the current proceeding as a substitute for collective bargaining, labor arbitration or National Labor Relation Board (NLRB) proceedings. Letter Reply at 4. Joint Petitioners argue that the issues of concern to the Locals are already covered by existing collective bargaining agreements, and the Board should not allow itself "to become embroiled in collective bargaining." Letter Reply at 1-3. They further state that federal law relating to issues raised by the Locals is "exclusive and completely preempts New Jersey regulatory law." Letter Reply at 3. After identifying collective bargaining agreements they believe exclusively address issues raised by the Locals, the Joint Petitioners conclude by requesting that the Board not permit the Locals "to utilize the current proceeding as a substitute for collective bargaining, labor arbitration or NLRB proceedings." *Id.* Joint Petitioners further state that they "will object to every attempt by the Locals to do so and again assert their position that federal law preempts the Board from 'entertaining the Locals' overtures in this regard." Letter Reply at 4.

## **DISCUSSION:**

N.J.A.C. 1:1-16.1 et seq. sets forth the standards for intervention in administrative proceedings. N.J.A.C. 1:1-16.1(a) provides: [a]ny person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene." In determining whether to grant intervention, N.J.A.C. 1:1-16.3(a) requires that the decision-maker take into consideration the following:

- 1 the nature and extent of the movant's interest in the outcome of the case;
- 2 whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. the prospect for confusion and delay arising from the movant's inclusion; and
4. other appropriate matters.

A review of the motion filed by the Locals clearly identifies issues which would be of concern to any union confronted with an employer's merger proposal. For example, possible lay-offs or force reductions are of obvious concern to employees represented by the Locals. In addition, the Locals have knowledge and experience related to customer service and general utility operations which would be relevant to this Board's exploration of the impact of the proposed merger on the continuation of safe, adequate, and proper service at reasonable rates. For such reason, the Board **FINDS** that the Locals have demonstrated an interest in the outcome of this proceeding sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case. The Locals have also indicated their intention to coordinate their participation and avoid any undue duplication or burden on other participants.

We are cognizant of Joint Petitioners' concerns that the Locals may intend to raise issues in their presentation as Intervenor in this case that are more appropriately, and possibly exclusively, within the purview of specific provisions of labor law or existing collective bargaining agreements and procedures. However, it is not possible, based on the brief discussion of such issues contained in the moving papers, to reach definitive conclusions on what may or may not fall within an exclusive or preempted area of labor law; nor is it necessary to do so at this juncture. The Locals have made a sufficient showing to support a grant of intervenor status. Should the Locals raise issues during the course of this proceeding that Joint Petitioners believe to be inappropriate, the Joint Petitioners have the right, as they themselves have noted, to object and provide specific legal support for their objections. Finally, we note that in Joint Petitioners' Reply they do not specifically object to the grant of intervenor status but rather express their strong concern that such status may be used to introduce into this proceeding issues which the Joint Petitioners believe to be exclusive collective bargaining issues. We believe that concern can be addressed on an issue by issue basis as such issue arises.

Consequently, the Board **HEREBY GRANTS** the Motion to Intervene and directs the Locals to coordinate their participation in this proceeding so as to avoid duplication and any undue burden on other participants.

#### REQUEST FOR DISCOVERY AND EVIDENTIARY HEARING

The motion filed by the Locals includes request for discovery and evidentiary hearings. Having granted the motion for intervention, we **HEREBY ORDER** the parties to begin the discovery process. As to the Locals' request regarding the holding of evidentiary hearings, that will be considered by the Board in the context of a proposed prehearing order to be prepared by the Board's advising Deputy Attorney General following the convening of a prehearing conference with the parties.

#### MOTION FOR PRO HAC VICE ADMISSION


The Board is in receipt of a motion by Jeff Charney, Esq., a New Jersey attorney, seeking the pro hac vice admission of Christopher S. Rothemich, Esq., an attorney in the state of New York. The motion states that: (1) Local Union Nos. 391 and 423 have requested Mr. Rothemich representation in this matter; (2) Mr. Rothemich is not subject to any pending disciplinary proceedings in any jurisdiction nor has he been previously disciplined in any jurisdiction; (3) Mr. Rothemich has paid the requisite fees to the New Jersey Lawyers Fund for Client Protection Ethics Financial committee fees as required by court rules; (4) Mr. Rothemich will be associated in this matter with the New Jersey counsel of record, Jeff Charney, Esq., and (5) Mr. Rothemich has represented Local Unions Nos. 391 and 423 in all labor/management issues since August 2004 and continues to do so. Motion for Admission at 1-2. Finally, Mr. Rothemich states that he will abide by all administrative and New Jersey court rules, including disciplinary rules. He

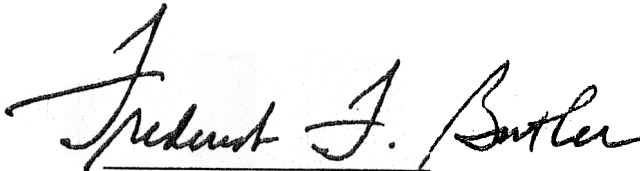
further consents to appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions that may arise out of his participation in this matter. He agrees to give notice immediately of any matter affecting his standing at the bar of any court. He will also have all pleadings, briefs and other papers filed in this proceeding signed by the attorney of record.

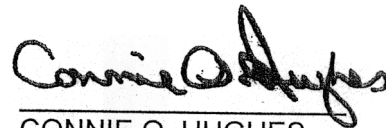
Based on the foregoing representations and conditioned there on, the Board **FINDS** that good cause has been shown to permit the appearance pro hac vice of Mr. Rothemich, an attorney of the State of New York, in this proceeding and **HEREBY GRANTS** the request for pro hac vice admission in this proceeding.

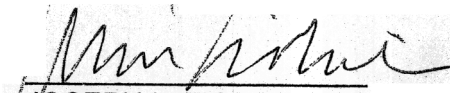
DATED: 8/18/06


BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

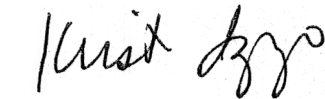
  
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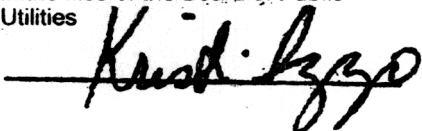
  
JOSEPH L. FIORDALISO  
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COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF THE JOINT PETITION OF NEW JERSEY-AMERICAN WATER  
COMPANY, INC. ELIZABETHTOWN WATER COMPANY, AND THE MOUNT HOLLY  
WATER COMPANY FOR APPROVAL OF THE MERGER OF ELIZABETHTOWN WATER  
COMPANY AND MOUNT HOLLY WATER COMPANY INTO NEW JERSEY-AMERICAN  
WATER COMPANY AND FOR RELATED AUTHORIZATIONS.

DOCKET NO. WM06030253

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